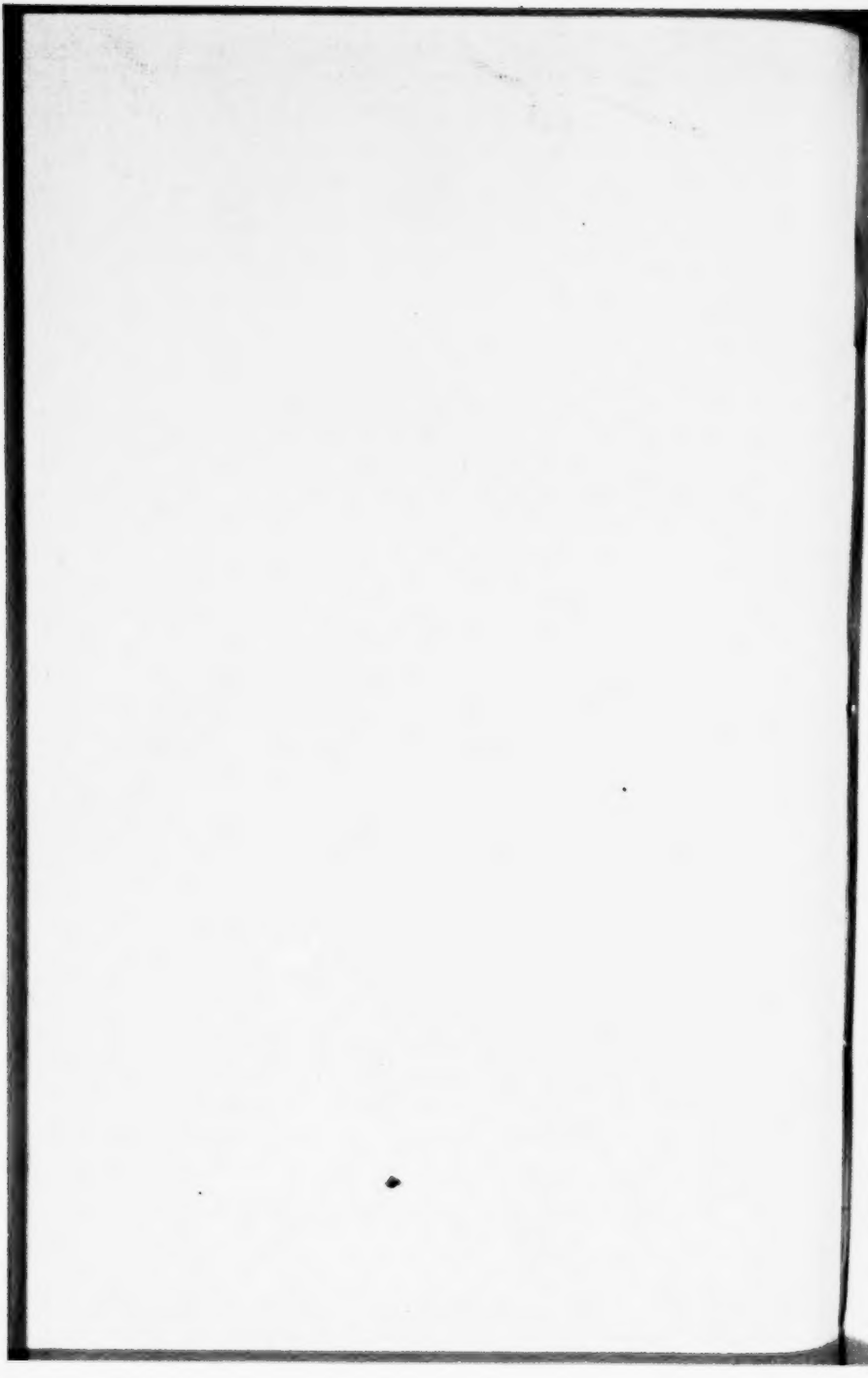

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CLERK

No. [illegible] Original. OCTOBER TERM, 1920.

IN THE

SUPREME COURT OF THE UNITED STATES

THE COMMONWEALTH OF PENNSYLVANIA,
Complainant,

vs.

THE STATE OF WEST VIRGINIA, Defendant,

Brief for Complainant on Motion of Defendant to Set Down the Cause for Final Hearing and Argument and for Other Directions.

GEORGE E. ALTER,
Attorney General of Pennsylvania.

A. LEO WEIL,
Counsel.

James McMillin Printing Company, Penn Ave. and Barbeau St., Pittsburgh, Pa.

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THE COMMONWEALTH OF PENNSYLVANIA,
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vs.

THE STATE OF WEST VIRGINIA, Defendant,

Brief for Complainant on Motion of Defendant to Set Down the Cause for Final Hearing and Argument and for Other Directions.

As to the Time for Hearing and Argument.

It is respectfully submitted that the time for hearing should not be fixed for an earlier period than the coming in of this Court after the December adjournment. While the evidence has all been taken, and while being taken was currently printed, there has not yet been printed a large volume of exhibits. These exhibits will comprise

many hundred pages, including maps and statistical tables, and cannot be printed and delivered in all probability before the first of July, if by that time. The testimony heretofore printed now aggregates 1,490 pages. The testimony and exhibits, it is estimated, will aggregate more than 2,000 pages.

The testimony was taken with unusual dispatch, considering the nature of the case and the location of the witnesses in three States, and was completed within the time fixed by order of this Court, to wit, by May 1st, 1921.

The complainant has no desire to postpone the hearing of this cause a day longer than is necessary to properly prepare and present to this Court the important questions involved. There is only ninety days difference between the complainant and defendant in their requests as to the date for hearing.

The complainant respectfully submits that it is impractical, if not quite impossible, to prepare for this Court a digest and analysis of the testimony, and an argument on the law and the facts, in less than from three to four months after the completed testimony and exhibits have been placed in the hands of counsel. Necessity for conference from time to time between counsel residing in different sections of the Commonwealth will prolong this time.

The chief counsel, the Attorney General of the Commonwealth, by reason of official duties, could not give his whole time to the preparation of the argument.

The summer vacations, beginning the first of July, just at the time the record will be completed, will postpone the beginning of the preparation of the argument until about the first of September, unless the health of counsel will enable them to forego such vacations. It would require, as stated, to complete the argument, from the first of September to the first of January.

It is therefore respectfully submitted, considering the size of the record, the character of the questions involved, the fact that this is a case of original jurisdiction, (and therefore the necessity of preparing a digest and analysis of the evidence, as well as brief and argument not only on the law but on the facts), that counsel could not properly prepare for presentation to this Court in convenient and proper form the argument for complainant, by any date prior to the coming in of this Court after the December adjournment, but could be ready for any date after December.

There is no useful purpose to be subserved by unduly hurrying this hearing now. No decision could be obtained in time to make available to the citizens of West Virginia increased supplies of gas for the winter of 1921-1922.

Under no circumstances, even if this case should be put down for hearing by this Court, and should be heard early in the October Term, could the questions raised be disposed of by this Court, (if it took the usual time for consideration and the writing of its opinion), early enough to enable consumers using gas in West Virginia, or from West Virginia, to make provision for any changes during the coming winter. To make preparation for such changes will require months in the re-

adjusting of furnaces, boilers and heaters in mills, factories, dwelling houses, etc.

So far as the draft upon the deposits of natural gas in the bowels of the earth is concerned, these deposits, with the present industrial depression and reduced demand in West Virginia, Pennsylvania and Ohio, throughout the industrial sections, are not being diminished anything like to the same extent as during periods of normality, and the conditions of the natural gas supply, therefore, that will obtain, whether this case is disposed of by this Court ninety days sooner or later, will not be substantially changed.

Taking into consideration the character of the parties, the nature of the controversy, and the results of the non-enforcement of the statute as contended by the defendant in its brief of argument, and the important and far-reaching effect upon interstate commerce of the enforcement of the statute, as contended by complainant, it is respectfully submitted that the date to be fixed for the final hearing of this cause should give amply sufficient time to counsel to properly, effectively, and in convenient form for examination by this Court, present the two thousand pages of evidence and the brief of the law.

It is submitted that, having regard to the summer vacations, to the official position, as Attorney General, of the chief counsel of complainant, and considering the length of the record, the time required for digesting and analyzing the same and to prepare the brief of argument upon the facts as well as the law, (this being a case of original jurisdiction), the time to be fixed for

the final hearing should not be a date prior to the coming in of this Court after the December adjournment.

If this Court, as complainant has contended and will contend, under the facts and the law, must make perpetual the preliminary injunction heretofore granted, then of course the date of final hearing, whether ninety days sooner or later, is of little or no importance to the State of West Virginia, but in any event the interests of the defendant can be but little affected by such slight delay.

II.

As to the application of defendant for an order to hear together this cause and that of the State of Ohio against the State of West Virginia, No 21 Original, October Term, 1920.

As to the alternative suggestion of counsel for the State of West Virginia that the two causes be heard in *immediate sequence, or as nearly contemporaneously as practicable,* no objection is made by the Commonwealth of Pennsylvania, but the Commonwealth of Pennsylvania does object to the consolidation for hearing of the two causes, for the following reasons:

1. The character of the complainants, both being sovereign States, and both actions having been instituted by the officials of the respective States by virtue of formal resolutions of their respective legislatures, containing recitals peculiarly applicable to the State so adopting the same.

2. The Attorneys General and counsel representing each of said States will feel obligated to fully present to this Court the peculiar hardships, loss, damage and danger to life and health, which the enforcement by West Virginia of the Act in controversy would occasion to the people in the different localities in such States, such localities differing as to availability of other fuel, either natural gas or substitutes.

3. Having regard to the foregoing, as well as to the difference in the evidence applicable to the respective States, but little time would be saved by the consolidation of the causes, as this Court would not be disposed to deny to the counsel of each of said States the opportunity to fully present their contentions.

4. The consolidation statute referred to by defendant, (Rev. Stats. U. S. Sec. 921), is for avoiding unnecessary costs or delay in the administration of justice, and would not apply to cases on final argument in this Court.

Respectfully Submitted,
GEORGE E. ALTER
Attorney General of the
Commonwealth of Pennsylvania.

A. LEO. WEIL,
Counsel.